

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC
COMPANY, a California Corporation, for a
Permit to Construct the Atlantic-Del Mar
Reinforcement Project Pursuant to
General Order 131-D. (U 39 E)

Application 01-07-004
(Filed July 9, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING REGARDING
NOTICE OF INTENT TO SEEK COMPENSATION**

On December 19, 2001, Kent and Anne Dazey (the Dazeys) filed a Notice of Intent (NOI) to claim compensation for their participation in this proceeding. The Dazeys' NOI is prepared and submitted pursuant to Pub. Util. Code § 1801 *et seq.* and Rule 76.71 *et seq.* of the Commission's Rules of Practice and Procedure.¹

After reviewing the Dazeys' filing, I am unable to determine, based on the information provided in the NOI, whether the Dazeys meet the definition of a customer, or have met the significant financial hardship test. Therefore, I cannot at this time conclude whether they are eligible for compensation in this proceeding. The Dazeys may amend their NOI to make this showing no later

¹ Unless otherwise indicated, all subsequent citations to code sections refer to the Public Utilities Code, and all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

than February 20, 2002. The Commission cannot determine whether the Dazeys have made a substantial contribution to the proceeding until the proceeding has concluded.

1. Timeliness

Section 1804(a)(1) provides that an NOI must be filed and served within 30 days after the prehearing conference (PHC), unless no PHC is held or the proceeding is expected to be completed in less than 30 days. A PHC in this case was held on October 25, 2001, and the Dazeys filed their NOI 25 days after the statutory deadline. The NOI provides no explanation about why it is untimely.

There is no prejudice to parties of the 25-day delay in filing the Dazeys' NOI. The delay had no impact on the schedule for this proceeding. Therefore, we will not reject the Dazeys' NOI out of hand, but will consider the NOI on the merits.²

2. Eligibility

To be eligible for compensation, a participant in a formal Commission proceeding, such as this one, must establish that it is a "customer" and that participation without compensation would pose a significant financial hardship.

2.1 Customer Status

Section 1802(b) defines the term "customer" as:

² Technically, the Dazeys should have filed a Motion for Acceptance of Late-Filed NOI, with the NOI attached, in order for us to consider the NOI. Because the Dazeys are private citizens with limited experience before the Commission, I will overlook this technical error. However, in order for the Dazeys to be effective in their participation in this proceeding, I encourage them to familiarize themselves with the Commission's Rules of Practice and Procedure in order to avoid technical problem with their filings. The Commission's Public Advisor is here to assist citizens in participating effectively in Commission proceedings (415 703 2074) and should be contacted if questions arise about the Commission's rules.

[A]ny participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers. . .

Thus, there are three categories of customers: (1) a participant representing consumers; (2) a representative authorized by a customer; and (3) a representative of a group or organization authorized in its articles of incorporation or bylaws to represent the interests of residential customers. The Commission requires a participant to specifically identify in its NOI how it meets the definition of customer and, if it is a group or organization, provide a copy of its articles or bylaws, noting where in the document the authorization to represent residential ratepayers can be found. (Decision (D.) 98-04-059, *mimeo.*, at pp. 30-32; *see, also*, fn. 13-16.) Further, a group or organization should indicate the percentage of its membership comprised of residential ratepayers. (See D.98-04-059, *mimeo.*, at pp. 83 and 88.)

A Category 1 customer is an actual customer who represents more than his own narrow self-interest; a self-appointed representative of at least some other consumers, customers, or subscribers of the utility. A Category 2 customer is a representative who has been authorized by actual customers to represent them. Category 2 connotes a more formal arrangement where a customer, or a group of customers, selects a presumably more skilled person to represent the customers' views in a proceeding. The Commission has noted that the statute permits a series of authorizations. For example, a customer or group of customers forms or authorizes a group to represent them, and the group in turn

authorizes a representative such as an attorney to represent the group. A Category 3 customer is a formally organized group authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers.

The Dazeys state that they are a residential customer of PG&E. The Dazeys do not indicate whether they are a self-appointed representative of other customers of the utility (Category 1) or a representative who has been authorized by actual customers to represent them under a more formal arrangement (Category 2) or a formally organized group authorized to represent the interests of residential customers (Category 3). Because the NOI mentions the formation of a citizens group, it is unclear under which category the Dazeys seek to participate. This determination is important because it impacts the requirements for a finding of significant financial hardship.

If the Dazeys seek a finding of eligibility they must amend their NOI no later than February 20, 2002 to specify the customer category they seek eligibility under.

2.2 Significant Financial Hardship

The Dazey seek a finding of significant financial hardship.

Section 1804(a)(B) allows the customer to include a showing of significant financial hardship in the NOI. Section 1802(g) defines “significant financial hardship” as:

“either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocates fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in

comparison to the costs of effective participation in the proceeding.”

Under § 1804(a)(2)(B), this showing may be made in the NOI, or alternatively, deferred until the request for compensation is filed.

If the Dazeys seek to participate as a Category 1 customer, they must demonstrate that undue financial hardship will occur as a result of their participation here. (*See* Section 1802(g).) D.98-04-059, *slip op.* at p. 36, requires participants seeking a finding of significant financial hardship to disclose their finances to the Commission, under appropriate protective order. As described in D.98-04-059, this means that Category 1 customers must disclose their gross and net monthly income, monthly expenses, cash and assets, including equity in real estate. Subsequent rulings have determined that it is reasonable to exclude the equity of a participant’s personal residence from this disclosure.

If the Dazeys seek to participate as a Category 2 customer, *i.e.*, as a representative authorized by a customer, we expect the representative to provide the same financial information described above for the customer who authorized him to serve in a representative capacity.

Without such information, the Commission is not in the position to determine whether participation constitutes a significant financial hardship for a Category 1 or 2 customer. In order to reduce the burden of producing such information, customers seeking eligibility rulings are able to file personal financial data under seal. In D.98-04-059 we developed a model filing for individual intervenors to obtain a protective order for use in intervenor compensation proceedings. For convenience, the model filing and protective order are attached to this ruling as Appendix A and B. As described in D.98-04-059, *slip op.*, p. 40:

“Procedures for obtaining information and records in the possession of the Commission are described in

General Order (GO) 66-C. Section 2 of GO 66-C describes some of the public records that are not open to public inspection. An intervenor seeking a protective order governing availability of personal financial information will need to assert a ground for excluding such personal financial information from public inspection.

GO 66-C § 2.2 includes as a public record not open to public inspection “[r]ecords or information of a confidential nature furnished to, or obtained by the Commission.” The personal financial information of an individual intervenor is arguably information of a confidential nature. While it is important to make this information available to parties preparing to respond to an individual intervenor’s assertion of eligibility for compensation, it is difficult to imagine a situation where a public benefit warrants making the personal financial information of an individual intervenor generally available for public inspection. However, we do not rule out the possibility that such a situation may present itself. Therefore, we will consider GO 66-C requests from individual intervenors to exclude their personal financial information from public inspection on a case-by-case basis. ”

If the Dazeys seek to participate as Category 1 or 2 customers, they must meet the requirements for disclosure described above to qualify for a finding of significant financial hardship.

If the Dazeys seek to participate as a Category 3 customer, § 1802(g) defines financial hardship as a state in which “the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.” To qualify for a finding of significant financial hardship under Category 3, the Dazeys will need to demonstrate that effective participation in this proceeding may cost well in

excess of typical residential electric bills for its individual members. In order to make that finding, we need to know the estimated cost of the Dazeys' participation and the average bills of the members of the organization they are appearing for, as well as the financial situation of the organization.

Because the Dazeys did not include a financial showing in their NOI and we cannot determine which customer category they intend to participate under, we are unable to determine whether they have satisfied the significant financial hardship requirement. The Dazeys may provide such information in an amended NOI if desired or may make the required showing in the request for award of compensation. In either case, the Dazeys are reminded that a finding of significant financial hardship in no way ensures an award of compensation (Section 1804(b)(2)).

3. Nature and Extent of Planned Participation; Estimate of Compensation

Section 1804(a)(2)(A) provides that the NOI shall include both a statement of the nature and extent of a customer's planned participation and an itemized estimate of the compensation that the customer expects to request.

3.1 Planned Participation

The Commission has stated that the information provided on planned participation should provide the basis for a critical preliminary assessment of whether (1) an intervenor will represent customer interests that would otherwise be underrepresented, (2) the participation of third-party customers is nonduplicative, and (3) that participation is necessary for a fair determination of the proceeding. The Administrative Law Judge may issue a preliminary ruling on these issues, based on the information contained in the NOI and in the Assigned Commissioner's scoping memo. (D.98-04-059, *mimeo.*, at pp. 27-28,

31-33.) Parties are encouraged to coordinate amongst themselves to ensure that efforts are not duplicated.

The NOI describes the Dazeys' participation thus far in the proceeding and states that they plan to participate by attending further conferences or hearings, conducting discovery, presenting testimony, or filing briefs or comments as necessary. The Dazeys state that their goal in participating is "to be a citizen's advocate for safety and visual impact of the project." (NOI, p. 3.) They request that they receive compensation for the cost of transcripts they have received thus far.

The NOI focuses on the Dazeys' interest in the proximity of the proposed transmission project to the Union Pacific Railroad and fuel tanks, the visual impacts and adequacy of visual simulations, and the accuracy of documents and measurements related to the proposed project. There is much overlap with the City of Rocklin in these areas of interest.

Mr. Dazey has also created a web page and made contacts with the media. In general, only activities that substantially contribute to a Commission decision are eligible for compensation. In the past, the Commission has determined that costs associated with outreach efforts, like organizing citizen opposition, press contacts, and legislative activities are ineligible for compensation. (*See* D.88-12-085, D.94-11-055, and D.99-07-046.) The Dazeys are cautioned that they must demonstrate, if a claim for compensation is made, that such efforts have a direct connection to the outcome of the Commission's decision in this proceeding. Merely alerting members of the public to the issues is not compensable.

Participation in Commission proceedings by parties representing the full range of affected interests is important and ensures a fully developed record.

It is possible that the Commission may benefit from the participation of parties whose interests, while potentially overlapping, may also diverge on specific issues. Thus, I preliminarily find that the Dazeys may represent customer interests that will be underrepresented if they are unable to participate effectively. Because there are groups with overlapping interests, however, I caution the Dazeys that compensation will not be paid for duplicative efforts. Merely appearing and stating positions will not assure compensation. I encourage the Dazeys to work actively with the other parties to agree among themselves, on issues that they will each address, in order to avoid duplication of effort should preparation of testimony or evidentiary hearings ultimately be required.

3.2 Estimate Compensation

Pub. Util. Code § 1804(a)(2)(A)(ii) requires that the NOI include an itemized estimate of compensation the intervenor expects to request. The Dazeys do not include an estimated budget for their participation. We cannot determine whether the Dazeys will incur a significant financial hardship without an estimate of compensation. The Dazeys should amend their NOI no later than February 20, 2002, to include an estimate of their costs of participation. The amendment should include an estimate of time by issue area, proposed hourly rates for compensation, if applicable, and expenses. The NOI specifically requests compensation for the cost of transcripts already billed. Parties who have filed for a ruling of eligibility to claim intervenor compensation receive transcripts free of charge. In this case, the Dazeys were billed for transcripts prior to filing their NOI. The Dazeys have paid for the transcripts. I have directed the Fiscal Office to reimburse the Dazeys for the cost of the transcripts, consistent with the treatment of parties seeking a ruling of eligibility.

IT IS RULED that:

1. The Dazeys have not provided sufficient information for the Commission to determine whether they are a customer as that term is defined in § 1804(b).
2. The Dazeys have not provided sufficient information for the Commission to determine whether they meet the eligibility requirements of Pub. Util. Code § 1804(a), including the requirement that they establish significant financial hardship.
3. The Dazeys fulfilled one of the requirements of § 1804(a)(2)(A) by providing a statement of the nature and extent of their planned participation.
4. The Dazeys have not fulfilled the requirement of Pub. Util. Code § 1804(a)(2)(A)(ii) to provide an itemized estimate of the compensation they expect to request.
5. The Commission cannot determine whether the Dazeys meet the definition of a customer, or have met the significant financial hardship test and therefore, cannot at this time conclude whether they are eligible for compensation in this proceeding.
6. If the Dazeys still seek a finding of eligibility to claim compensation in this proceeding, they shall file an amended NOI no later than February 20, 2002 as described herein.

Dated February 4, 2002, at San Francisco, California.

/s/ Michelle Cooke

Michelle Cooke
Administrative Law Judge

APPENDIX A

APPENDIX A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

(proceeding caption)

(docket number)

Motion for Protective Order of (individual intervenor's name)
Regarding Personal Financial Information

I have filed separately today a (Notice of Intent to Claim Compensation or Request for Compensation), with attached personal financial information supporting my eligibility to claim compensation. I have filed it under seal. I submit this motion pursuant to General Order (GO) 66-C and request a limited protective order directing that my personal financial information be withheld from public inspection.

GO 66-C § 2.2 excludes from public inspection “[r]ecords or information of a confidential nature furnished to, or obtained by the Commission.” My personal financial information is confidential in nature. Making it generally available for public inspection would unnecessarily intrude on my privacy. Commission staff should be permitted to review this information because it provides facts pertinent to my showing of significant financial hardship, which is a component of my eligibility request. I recognize that parties of record may also wish to review and comment on this information, to discover facts that might support related pleadings before the Commission. To accommodate such review, I consent to the Commission’s use of an appropriate nondisclosure agreement.

Dated _____ at (location) .

(signature)
(Name)
(Address)
(Telephone Number)

(END OF APPENDIX A)

APPENDIX B

Model Nondisclosure Agreement Governing Disclosure of An Intervenor Financial Information

APPENDIX B

Nondisclosure Agreement Regarding
Personal Financial Information of [name of intervenor] in
[docket number]

I am a party or representative of a party in [docket number].

I understand that the personal financial information filed by [name of intervenor] in this proceeding is confidential, and I agree that I will use the information only for the purpose of responding to that person's Notice of Intent to Claim Compensation or Request for Compensation.

I will not disclose, copy or disseminate the confidential information in any manner, and I will safeguard the confidential information from inadvertent or incidental disclosure. I understand that confidentiality protections continue after this proceeding is completed.

Dated _____ at _____ (location) _____.

(Signature) _____

(Name)

(Address)

(Telephone Number)

(END OF APPENDIX B)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Notice of Intent to Seek Compensation on all parties of record in this proceeding or their attorneys of record.

Dated February 4, 2002, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.